

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

HARVEY PATRICK SHORT,

Plaintiff,

v.

Civil Action No. 2:10cv28

**JOE MANCHIN, Governor;
JIM RUBENSTEIN, Commissioner;
DENNIS FOREMAN, WV Parole Board Chairman;
WILLIAM M. FOX, Warden;
MISTY ADAMS, Case Manager;
JACK STOLLINGS, Unit Manager;
and JOHN DOE, SMCC Captain,**

Defendants.

ORDER

On October 29, 2010, Magistrate Judge James E. Seibert filed his Report and Recommendation ("R&R") (Doc. 41), wherein the plaintiff was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within fourteen (14) days after being served with a copy of the Report and Recommendation. No objections to the Magistrate Judge's R&R have been filed. Accordingly, the Court will proceed with consideration of the R&R, reviewing for clear error.¹

The Magistrate Judge recommends that the plaintiff's Motion for Leave to Proceed *In Forma Pauperis* (Doc. 2) be denied, and that the case be dismissed with prejudice pursuant to 28 U.S.C. §1915(g), which provides that a prisoner shall not be permitted to proceed *in forma pauperis* if he has brought three or more actions or appeals that were dismissed as frivolous, malicious, or for failing to state a claim. Upon a review for clear error

¹The failure of a party to object to a Report and Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See ***Wells v. Shriners Hospital***, 109 F.3d 198, 199-200 (4th Cir. 1997); ***Thomas v. Arn***, 474 U.S. 140, 148-153 (1985).

of all matters now before it, the Court is of the opinion that the R&R accurately reflects the law applicable to the facts and circumstances before the Court in this action. Therefore, it is

ORDERED that Magistrate Judge Seibert's R&R (Doc. 41) shall be, and the same hereby is, **ADOPTED**. Accordingly, it is

ORDERED that plaintiff's Motion for Leave to Proceed *In Forma Pauperis* (Doc. 2), shall be, and the same hereby is, **DENIED**. It is further

ORDERED that the above-styled civil action shall be, and the same hereby is, **DISMISSED WITHOUT PREJUDICE** pursuant to 28 U.S.C. §1915(g). It is further


ORDERED that all remaining pending motions shall be, and the same hereby are, **DENIED** as **MOOT**, and that this civil action be **STRICKEN** from the docket of the Court. It is further

ORDERED that the Clerk shall enter judgment for the defendants. It is further

ORDERED that, if the plaintiff should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court of Appeals for the Fourth Circuit.

The Clerk of the Court is directed to transmit a copy of this Order to all parties appearing herein.

DATED: December 2, 2010.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE